Supreme Court, U.S.
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No.

In the

Supreme Court of the United States

JAMES L. MARTIN,

Petitioner,

versus

CHUCK QUACKENBUSH, JOSEPH A. GAETANO, HONORABLE KURT J. LEWIN, SUPERIOR COURT for the STATE of CALIFORNIA for the COUNTY of LOS ANGELES,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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53pp

ISSUES PRESENTED

A. Is a justice, serving on the Supreme Court of the United States, and subject to the recusal statute at 28 USC Sec. 455, subject to involuntary recusal and disqualification *nunc pro tunc* where the disqualifying circumstances relate back many years, and where the Clerks foreclosed motions to recuse from being docketed?

B. May a federal trial court rely exclusively upon a Magistrate's Report and Recommendation that was never issued to dispose of a final, appealable question?

C. May an attorney be disbarred without cause?

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is reproduced at 1a. The order and judgment of the United States District Court for the Central District of California is reproduced at 4a. The decision of the Court of Appeals denying the petition for rehearing *en banc* is reproduced at 20a.

STATEMENT OF THIS COURT'S JURISDICTION

The decision sought to be reviewed was issued on 5-29-01, at Ex-1a to 2a, and the decisions on rehearing, and on rehearing *en banc*, were issued on 7-30-01, at Ex-3a. The trial court decision is at Ex-4a to 5a. However, after the case was closed in the Ninth Circuit, with this condition: "No further filings shall be accepted in this closed appeal," the trial court entered a "minute order" "to show that **no Magistrate Judge's Report and Recommendation** [emphasis in original] was filed." Ex-6a. The trial court's order appealed from reads in relevant part: "The Court HEREBY ADOPTS Magistrate Judge Ralph Zarefsky's recommendation . . .." Ex-4a. I had been requesting a copy of the Magistrate's Report and Recommendation for several weeks, not only because the Report was required to be included in the appendix filed in the appellate courts, but also because the judge exclusively relied on it for the decision.

The time to file here was extended to 11-27-01 to allow the Ninth Circuit to rule on a related case at No. 00-15973. That decision is at Ex-7a to 8a. The trial court's decision is at Ex-9a to 16a. A decision from Commissioner Shaw, filed 8-7-00, is at 17a: "The opening brief was due on July 17, 2000." The Order directs me to "file a motion for extension of time to file the opening brief late, along with the

opening brief." The opening brief was already in the record, filed on time, when this Order was issued.

This Court's jurisdiction for review is at 28 USC Sec. 1254(1).

AUTHORITIES RELIED UPON

28 USC Sec. 455 DISQUALIFICATION OF JUSTICE, JUDGE, ...

"(a) Any judge . . . shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, ..."

F. R. Civ. P. 60(a):

> "(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court."

F. R. Civ. P. 60(b):

> "On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; . . . The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. . . .

STATEMENT OF THE CASE

Basis for federal jurisdiction in the court below. The Court of Appeals has jurisdiction pursuant to 28 USC Sec. 1291, for appeal from a final order.

Facts. The US Department of Education, through its Office for Civil Rights, issued an administrative decision in my favor and against the Widener University School of Law in Wilmington, Delaware. This decision was issued over ten (10) years ago following an investigation into the Law School's inclusion of a question about an applicant's remote medical history on its application form for admission to the Law School.

The judges who presided over these related cases have either relied upon biased judges with blatant conflicts of interest with the Law School, or such judges have had blatant conflicts of interest themselves, at all levels within the state and federal judicial system. To illustrate, Chief Justice Rehnquist was at the Widener University School of Law's Radisson Hotel on Friday, October 23, 1998, where he was an honored guest who spoke about wartime civil liberties. Afterwards, the Law School held a private reception in its library for Chief Justice Rehnquist, so that the affiliation between Justice Rehnquist and the Law School cannot be

questioned. The decisions from more than one-hundred (100) certiorari petitions would have been substantially different if a neutral judge had been presiding, rather than one so completely committed to the adversaries of this petitioner. Chief Justice Rehnquist was awarded an honorary doctor of laws degree from the Law School over eighteen (18) years ago. Jeff Moulton, a professor on the faculty at the Law School, who clerked for Justice Rehnquist in the mid-1980's, introduced Justice Rehnquist to the audience of about six hundred (600), mostly students, alumni, judges, and faculty. (See article from Sec. B1, *The News Journal*, Wilmington, DE, Oct. 24, 1998.) The *Widener Magazine*, a Publication of the Office of University Relations, Spring 2001 edition, at p, 35, contains a picture of "Fitz Eugene Dixon, chairman of the [Widener] Board of Trustees, Chief Justice William Rehnquist, and [Widener President Robert J.] Bruce," and they are standing close to one another, with no one else on the picture.

The decision from the trial court rivals the related, prior decisions from the US Supreme Court, tainted as they are with the bias recited above, so that no reasonable reading of the facts could possibly warrant the decision. The controlling part of the trial court order reads:

> "Magistrate Judge Ralph Zarefsky recommends that the Court deny plaintiff's motion to reopen because it is time barred. No objections have been filed to Magistrate Judge Ralph Zarefsky's proposed order. The Court HEREBY ADOPTS Magistrate Judge Ralph Zarefsky's recommendation . . .."

Ex-4a.

I did not get any Report from the Magistrate, so I began to request it. Assistant Noe Ponce advised me by letter: "The US District Court no longer fills copy requests. Please contact West Coast Copy Service for your request."

West Coast Copy informed me that the Magistrate's Report could not be located in the file. I then requested a copy of the docket entries. The suspect Report does not appear anywhere in the record. After discussing the problem with Correspondence Clerk William Tennison, I learned that the Clerk cannot certify the non-existence of a suspect document. The Clerk is limited to certifying "that the foregoing document is a full, true, and correct copy of the original on file in my office, and in my legal custody," on a specific date. On 10-9-01, the Clerk issued a certified copy of the docket entries, and no entry mentioned the suspect Magistrate's Report.

On 10-10-01, I served a Rule 60(a) Motion to Reopen and noted:

> "Because the Magistrate's Report and Recommendation is required to file a certiorari petition, but because the Magistrate's Report and Recommendation was never issued, the Court should issue an order to clarify the fact that the Report and Recommendation, although cited as the basis for the Court's ruling, does not exist.
>
> * * * * * * * *
>
> "This motion to reopen should be granted, in view of the requirement to provide the Magistrate's Report and Recommendation as part of a certiorari petition. The fact that the

> Magistrate's Report and Recommendation was never issued is outcome-determinative."

On 10-16-01, without awaiting any response from the respondents, who never filed any, the trial judge issued a "minute order" designed "to show that **no Magistrate Judge's Report and Recommendation** was filed. Therefore, no objections to it have been filed. The reason for the Court's denial remains unchanged." Ex-6a.

Respondent Quackenbush's misconduct forced his resignation from political office during the pendency of this case. According to AP reporter John Howard's article on 7-9-00, entitled "Quackenbush's top deputies resign *en masse*," the problems were not limited to Quackenbush himself. To a certain extent, this news makes the scenario borne out in the pleadings and proofs in the matter *sub judice* more credible:

> The resignations under pressure of Insurance Commissioner Charles Quackenbush's entire high command, linked to the political scandal that forced the resignation of their boss, were announced Thursday as a reorgnization of the Insurance Department got under way.
>
> Sacramento law professor Clark Kelso, appointed Wednesday as the troubled department's temporary caretaker, said he accepted the resignations of the six officials to expedite "the transition to a permanent insurance commissioner and new department leadership that will be appointed by Gov. Davis in due course."
>
> An attorney for former Deputy Insurance Commissioner George Grays said his client will tell federal and state investigators that

Quackenbush was involved in efforts to collect money for policitcal advertising from insurance company settlements, the Sacramento Bee reported.

Grays, who refused to testify before an Assembly committee investigating the Department of Insurance, will also say that other top aides at the department were aware of Quackenbush's goal to benefit politically, said William Portanova, one of twc criminal defense attorneys representing Grays.

Quackenbush attorney Donald Heller said Grays was "a liar trying to save his own skin and willing to do anything to save himself from going to prison."

The resignations Thursday came from Chief Deputy Commissioner Michael Kelley, Chief Counsel Brian Soublet and deputy commissioners Mark Lowder, Jim Dong, Steve Suchil and David Langenbacher.

Their salaries ranged from Dong's $88,188 annually to Kelley's $118,524 a year. The executives will return to lower levels of the bureaucracy, probably outside the Insurance Department, said department spokesman Scott Edelen.

Kelso said he would appoint their replacements shortly.

"In the next several days, I'll be appointing acting deputy commissioners to fulfill leadership positions within the department," he said.

One of those has already been named: Deputy Attorney general Steven J. Green was named acting chief counsel to replace Soublet, who was Quackenbush's top lawyer.

Quackenbush, plagued by an intensifying scandal stemming from his handling of insurers' settlement funds, announced his departure last week. His resignation takes effect July 10.

During legislative hearings that led up to Quackenbush's resignation, lawmakers expressed concerns about the roles, if any, played by Quackenbush's deputies in the settlement funds.

Sen. Jackie Speier, D-San Francisco, the head of the Senate Insurance Committee, said testimony from the deputies raised questions as to the extent of their involvement in Quackenbush's activities.

She said Kelso's action "was right on the money."

"They (the deputies) were just not civil servants and they don't in my estimation deserve to hold those positions," Speier added.

Speier's committee is investigating the aides' connections to the funds, which also are under investigation by the state attorney general's office.

Kelso said earlier that a speedy reorganization of the Insurance Department was necessary because the agency was "in a near state of paralysis at some level."

> Davis is expected to appoint a successor to Quackenbush within a few weeks. The appointee, if confirmed by the Legislature, will hold the job until voters elect a commissioner in fall 2002.

The magnitude of this case, and of those related to it, is extensive enough that the reluctance of various courts to reopen and to vacate dozens of decisions is understandable in view of the deep-rooted and scandalous but consistent notoriety of the parties involved. I have a hand-written letter from felon Ernest Preate, who was the Attorney General of PA when the related cases were pending there, that he wrote to me while he was in the federal penitentiary. He claims to have no knowledge of any of the cases from those years, even though his name appears on the opposition briefs. The state of PA was alleging that they had medical records about me that they later admitted to be non-existent, even though said "records" were cited at the Law School I attended as the basis for questioning my answer concerning my own medical history--a question specifically held to be unlawful as a violation of the Rehabilitation Act of 1983, Sec. 504 (29 USC Sec. 794, *et. seq.*). On 7-14-88, after the respondent Insurance Commissioner Quackenbush, through the respondent Senior Vice President in charge of Claims Gaetano, notified me right to file a Proof of Claim, I filed for contingent and undetermined money damages in my capacity of an unsatisfied, final administrative judgment creditor of Delaware Law School of Widener University, which was defunct Mission's insured. The demise of various members of the Pennsylvania judiciary, who endorsed the Preate scheme, should also weigh heavily in the fair disposition of this matter, but page limitations will restrict the scope of that demise.

The abuses documented from the trial court in California rival those arising in Hawaii, in the related case also subject to review by way of the Ninth Circuit here. The trial court's Order dated 2-11-99 refers to a possible revocation of my Hawaii bar admission under Local Rule 83.4(d), which reads,

> "Whenever it comes to the attention of the court that any member of the bar of this court has been disbarred or suspended from practice by any court or that he has been convicted of a felony or of an offense involving moral turpitude, a notice shall be mailed to such member at the member's last known residential and office address, requiring the member toshow cause within 15 days after the mailing of such notice, why the member should not be disbarred or suspended from practice before this court."

The precise issue at the core of this matter has been previously raised before the Hawaii Federal Court, and has already been resolved in my favor when I was admitted to practice. Deputy Clerk Natalie Higa referred my application for admission to the Court in view the disclosure on my application, which showed that I was not a current member of any state bar, because the admissions clerk in the state court lied about my standing there. Local Rule 110-1 (a) & (b) specifically provided for a procedure to refer an extraordinary admission matter to the court for final action. I issued an affidavit on 1-21-97, and accounted for the reasons I was no longer considered in good standing in the state bar, and was admitted in Hawaii on 2-21-97 by the court, as disclosed in written correspondence from the Court, and in my Certificate

of Good Standing, all reproduced in the lengthy record below.

Because the same issue that the Federal Circuit raised had been previously raised and resolved on its merits in Hawaii, the decision from Hawaii on 2-21-97 should foreclose any further controversy about the same question under the doctrine of *res judicata*.

To the extent any additional discussion was needed, I proved that my state bar admission was not a "mistake," as some of the Circuits have argued, but rather resulted from a systematic effort on the part of the members of the NJ Committee on Character to falsely portray me as being unfit to practice law before the state bar, even though I was already sworn in to practice law.

I was admitted to the Supreme Court of New Jersey on April 2, 1984, evidenced through my Certificate of Good Standing. I have neither been suspended nor disbarred from that Court; however, the Clerk issued a letter to me that my admission was the result of their mistake. As noted, I later learned that no mistake occurred, and the attempt to interfere with my good standing before the state bar resulted from official lies and corruption.

The "official corruption" consisted, at least in part, in the falsification of my sworn deposition testimony at a "hearing" before the NJ Committee on Character, on 4-5-90. David C. Lock, an expert in sound recordings, issued a 51-page affidavit on 3-9-99, which has been reproduced in its entirety in the trail court's record, and which details the difference between the testimony actually given and which I preserved with a secretly made audio cassettee tape recording, versus the fictitious testimony attributed to me, and to Dr. Eric Copeland, who testified on my behalf at the same hearing. No one ever appeared to testify against me.

Dr. Copeland and I both demanded that the NJ Committee on Character revise the official transcript to accurately disclose our testimony. When they refused, we each set forth the differences between what our testimony was on the one hand, and what the NJ Committee attributed to us on the other hand. Dr. Copeland's statement and my statement were issued in October 1990, within a short time after the "official transcript" was made available to us. In a certified letter to me dated 7-18-90, Jeffrey Baron, Chairman of the NJ Committee on Character, wrote in response to our demands for correcting the transcript:

> "Second, we consider the transcript of the April 5, 1990 hearing to be full, complete and accurate. If you desire to submit any proposed corrections, please submit same to Ms. Martha K. Treese at Committee on Character, CN 973, Trenton, NJ 08625. Please be advised, however, that no changes of substance will be permitted; only changes as to misspellings or similar errors (if any)."

The same letter set forth the corrupt Committee's claim that ". . . the constitutional issues of privacy surrounding such [tape] recordings weigh against their admission," even though I had clearly informed them that the tape recordings I sought to admit in evidence were made with the prior knowledge and express consent of those persons whose involvement in my background was the focal point of one issue about my medical past, and medical history was not a lawful area of inquiry pursuant to the Rehabilitation Act of 1973, Sec. 504.

Although we submitted the corrections, they were buried in the record, and to the extent any references were

made to them in related proceedings, the psychotic remarks that the corrupt Committee on Character attributed to me were accepted without question.

FRAP 46 governs the eligibility for admission to the bar, as well as the suspension or disbarment of attorneys. No provision appears anywhere for "revocation," which is a transparent ploy exported unilaterally from the state court system to the Federal Circuit, and designed to deprive me of the safeguards supposed to be afforded incident to a "hearing, if requested." FRAP 46(b) and (c). I requested a hearing before the Federal Circuit, but my request was ignored. I made this request for a hearing in these words, which appear in the "Answer to Order to Show Cause," filed with the Federal Circuit on 5-13-97, in para. 24, p. 7: ". . . I request a hearing, with the customary requirements of due process."

Former Federal Circuit Clerk Gindhart determined that my "application for admission to the bar of this Court is in order and I have enrolled you as an attorney entitled to practice in the Court." In June 1996, Federal Circuit Admissions Clerk Pamela Twiford wrote a letter to me, which said in relevant part: "I show no record of your membership with the US Court of Appeals for the Federal Circuit."

I replied, on the same correspondence, dated 6-10-96: "On April 18, 1995, I was admitted to the US Court of Appeals for the Federal Circuit, as disclosed in the April 18, 1995 letter to me from Mr. Gindhart. I am also enclosing a copy of my Application for Admission, and a copy of the front and back of my check for $25 to the Clerk to pay the bar admission fee. The check cleared on 4-24-95." The Federal Circuit then issued me a Certificate of Good Standing.

There was no genuine issue about my eligibility for membership in the Federal Circuit, for the issue would have

been raised well before 1997, because two Federal Circuit admissions clerks reviewed my application, including the Chief Clerk, before my Certificate of Good Standing was issued. On 7-8-97, I reapplied to the Federal Circuit. Because the Federal Circuit admission may be based upon an admission to other US Courts of Appeals or to US District Courts, I anticipated having the Archer nullity disregarded, so that my admission to the Federal Circuit would be recognized on an independent basis.

Instead, Chief Deputy Clerk of Operations Pamela J. Twiford returned my application, my check for the admission fee, with a letter dated 7-28-97 that reads: "The Court issued an order on June 20, 1997 revoking your membership to the bar of this court. Your application for membership and check in the amount of $25.00 are being returned." Therefore, contrary to the Archer Order of 6-20-97, which refers to "revocation" of my membership in the Federal Circuit Bar, the Order has been construed against me as a "disbarment, without provision for reinstatement or reapplication." The continuing effort to undermine my career is especially remarkable in view of my unblemished lifetime record, and of the total lack of any authority for imputing "mistakes," supposedly committed in a court clerk's office, to an attorney in good standing before various courts.

The record that David H. Hisashima, Courtroom Deputy in Hawaii, compiled to comprise the docket does contain a serious of incorrect, and likely intentional, misrepresentations. He claims: "Mr. Martin informed me that he was contemplating filing a Motion for Summary Judgment. I informed him to file it ASAP." In fact, as noted in the NOTICE I filed in the district court on 1-19-00, the Hawaii District Court impounded my Motion for Summary Judgment and did not file it, until after I sent the aforesaid

NOTICE (without another copy of the Motion for Summary Judgment) by certified mail. The Notice reads:

> "I, James L. Martin, certify that I moved for public access of the unprecedented summary disbarment proceedings, initiated without cause or excuse, by **sending a Motion to the Clerk on the 22nd day of December 1999 by first-class, postage-prepaid mail**.
>
> **I further certify that I included an extensive Motion for Summary Judgment**, [emphasis added] as well as a Motion for a Hearing via Phone Conference Call. Each one of these three Motions included an additional copy of the first page, with a request to return them to me in a stamped, self-addressed envelope that I also enclosed.
>
> **I did not receive any of them back, so I called Law Clerk David Hisashima at (808) 541-3085, and left a message for him on the answering machine, at 9:55 a.m. (Hawaii time), on Thursday, January 6, 2000** [emphasis added]. I did not get any return call so far.
>
> DATED: January 15, 2000 /s/ James L. Martin"

The docket entries disclose the filing of the "NOTICE," on 1/19/00. Unlike other entries, nothing is mentioned about what it says. Additionally, the sequence number suggests that it was impounded. The sequence numbers read: 8, 12, 9, 10, 11, and 13. The sequence numbers should read: 8, 9, 10, 11, 12, and 13. The reason the sequence numbers are out of order is because the three

motions referred to in the NOTICE, at 12, were received before the end of 1999, and therefore before the scheduled hearing on 1-6-00, but the trial court, and most likely Mr. Hisashima in particular, impounded all three Motions, without filing or entering them in the docket, until after I filed the NOTICE by certified mail, which occurred after the 1-6-00 hearing. The docket indicated that the appeal fee had not been paid. In fact, I paid the appeal fee at the same time I filed the Notice of Appeal, on 5-3-00. The clerk cashed my check, then issued a letter to me, at Ex-19a below, that the appeal fee remained unpaid. Even after I sent a copy of the front and back of the cashed check, with a copy of my corresponding bank statement to verify that the amount for the filing fee had been taken out of my account, the district court nonetheless refused to rectify the record, and I had to present the evidence, anew, to the Clerk for the Ninth Circuit.

I mentioned many of these same irregularities when I moved for reconsideration of my motion for summary judgment, and of my motion for a hearing via phone conference call. Because I had not received verification for the filing of any one of the three (3) Motions at issue by 1-6-00, I called Clerk David Hisashima at (808) 541-3085, and left a message for him on his answering machine, at 9:55 a.m. (Hawaii time), on Thursday, January 6, 2000, which was the time for the scheduled hearing. I did not get any return call. In my message, I explained the reason the certified letter had been returned to the court: he misaddressed the envelope to me at 801, rather than at 805 W. 21st St. I mentioned the three (3) motions I had mailed on 12-22-99, and gave the reasons I was unable to attend, but also mentioned I would be at (302) 652-3957 to present argument by phone on the merits as further set forth in the documents I had mailed for filing.

Because the Motion for Summary Judgment and the Motion for Hearing Via Phone Conference Call were both mailed on 12-22-99 in the same envelope, they were most likely received before the end of 1999 in the Clerk's Office. Nevertheless, they were not filed until 1-20-00, and that filing occurred within a day after my "Notice," sent by certified mail, was received in the Clerk's Office on 1-19-00.

The delay in filing the motions at issue, for several weeks, is a procedural irregularity that complements the inaccurate and the inconsistent recitation of phone communications between Clerk Hisashima and me.

I recall the conversation of 12-19-99 specifically, partly because it was a Sunday afternoon, E. S. T., when Clerk Hisashima called me. The Order fails to note anything about the actual purpose of Clerk Hisashima's call, on 12-19-99, to me. He said he was calling me because he had recently mailed a certified letter to me, but it had been returned with "Attempted, Not Known," stamped on the envelope. I asked him to send me a copy of the envelope from his file, and he agreed to do so. He told me what the letter was about, and I told him I was working on a Motion for Summary Judgment. He responded that I should file it promptly, and I said it would be finished later the same week, and sent to the Clerk's Office by mail, which I then did. I also mentioned the problems I had been having with criminals who had stolen my mail, and that I was thinking about possibly filing a Motion for a Phone Conference Call in lieu of a hearing in court.

These facts are in contrast to what appears in the Order, which says: "Martin notified the Court, by way of telephone, that he would appear at the hearing. Martin, however, failed to appear at the January 6 hearing." Ex-9a to 10a. On 11-19-99, Clerk Hisashima called me to inquire whether I would be available for a hearing on January 6,

2000, and at that time, I said I would be available. However, the situation changed, as noted in detail in the record, and by the next phone conversation, which Clerk Hisashima also initiated, on 12-19-99, I responded that I would still be available at that time, but it may have to be by phone.

Another inconsistency between what occurred, and what the Order says, pertains to my request for a phone conference call. I did file a written request, but not an oral request, prior to the hearing, and this was mailed to the Clerk's Office on 12-22-99. Therefore, this statement in the Order is false: "Prior to the hearing, Martin made an oral request to appear by telephone. The request was denied." Ex-10a. Moreover, I never talked with any judge by phone about this case, so to indicate that a request was "denied" is obviously wrong. The phone message I left at the time the hearing was scheduled, on 1-6-00, referred to the Motion for a Phone Conference that I had sent on 12-22-99.

This statement in the Order is false: "In addition, Martin advised clerk David Hisashima on December 19, 1999, that he would appear at the January 6, 2000, hearing. Martin failed to appear at the hearing." Ex-10a. Clerk Hisashima did not call me on 12-19-99 to ask me whether I intended to appear at the hearing, but rather, he called to ask whether I was still living at the same address, and he did so because, on 12-1-99, the Clerk had sent a certified letter to me, but it was returned "Attempted, Not Known." (It was returned because the Clerk incorrectly addressed it.) I previously explained that I was preparing a Motion for Summary Judgment at that time, I informed the Clerk of my intention to file it promptly. The Clerk impounded it without filing for several weeks after its receipt in the courthouse, along with at least one other Motion.

This statement in the Order is false: "Martin has not produced any new information that explains why he failed to

appear, or that requires a reversal of the Court's prior decision to deny the ability to appear by telephone." Ex-10a. The reason it is false may be gleaned from what appears in the 1-18-00 Order: "As the record of this court shows, Martin was given full notice of the January 6, 2000, hearing and advised clerk David Hisashima on December 19, 1999, that he would appear at the Janaury 6, 2000 hearing. When the matter was called before the three hearing judges, Martin did not appear."

If the Court had actually issued a prior decision on the request for a phone conference, then the Motion for a Phone Conference would have had to be filed on or before 1-6-00. In fact, the Motion for a Phone Conference was not filed until 1-20-00, even though I mailed it on 12-22-99. The last time I talked with Clerk Hisashima was on 12-19-00 [although I left a lengthy message for him on 1-6-00, to which he never responded], and at that time, I had not even prepared a Motion for a Phone Conference. The only other time I had any phone contact with the court was on 1-6-00, when I left a message about my mailing the three motions at issue. Therefore, there was no "prior decision" on the issue of a phone conference. My phone message on 1-6-00 for Clerk Hisashima, transcribed from a tape recording, was:

> "Hello, this is Jim Martin calling for Mr. David Hisashima, on Thursday, January 6, 2000, and it is ten o'clock your time. I'm calling from Wilmington, Delaware, about a few issues. First, with regard to the certified letter that was returned--attempted, not known--that was misaddressed. It was addressed to 801 W. 21st St., rather than 805 W. 21st St. And I also sent out a Motion for Summary Judgment from here on December 22, as well as a Motion to Request a

> Conference Call, rather than an in-court hearing in light of a crime involving the intercepting of my mail and a criminal, who has been released from jail in Pennsylvania, came to Delaware and used a computer printer to print out counterfeit checks with my name and address on, and forged many of them, so I've been working with a detective to get this case together. My understanding is that much of this has been seized with an arrest warrant--or with a search warrant rather--so that explains why I was not able to come in person, as I indicated in the motion that I filed. It went out from Wilmington by mail on December 22. So my phone number here, in case you want to reach me today, is (302) 652-3957. Thanks very much. Bye."

The undue delay between the service and the filing of the motions at issue should be considered in light of the documented irregularities dealing with the scheduling of the hearing. David H. Hisashima, Courtroom Deputy in Hawaii Federal District Court, claims to have made numerous phone calls to me, and claims to have left messages, and further alleges that I did not return his calls, according to what he wrote in the docket. In fact, according to my notes and phone bills, I returned Mr. Hisashima's calls on 9-22-99, on 11-19-99, and called him just minutes before the scheduled hearing, on 1-6-00. Some of my mail was stolen, including the phone bill showing my 9-22-99 call to Mr. Hisashima. The long-distance phone service provider sent me another copy of the bill. It is reproduced in the record below, and documents the call I made to Mr. Hisashima's phone number on 9-22-00, which he denied.

REASONS THE WRIT SHOULD BE GRANTED

A. A justice serving on the Supreme Court of the United States is subject to the recusal statute at 28 USC Sec. 455, and may be involuntarily recused *nunc pro tunc* where the reasons for disqualification are compelling and relate back about eighteen (18) years, and include errant participation in dozens of certiorari petitions.

A reference that a justice "took no part in the consideration or decision of this petition" does not meet the standard in the recusal statute, especially where the disqualifying circumstances relate back many years, and where the Clerks consistently enjoined recusal motions for being docketed. The controlling statute is at 28 USC Sec. 455, DISQUALIFICATION OF JUSTICE, JUDGE, ...:

> (a) Any judge . . . shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
>
> (b) He shall also disqualify himself in the following circumstances:
>
> (1) Where he has a personal bias or prejudice concerning a party, ...

I filed a recusal motion *nunc pro tunc* directed to Chief Justice Rehnquist numerous times, including one such request in *Martin v. US Dept. of Education*, on 3-5-01. The factual basis for the recusal request is Chief Justice Rehnquist's continuing and prolonged affiliation with the Widener University School of Law, whose insurance company became solvent after I was awarded a final administrative judgment against it that was never satisfied because liar Joseph Farnan, a paid Law School employee,

acting under color of the federal trial judiciary, claimed it could be "ignored" when the action to enforce the judgment was filed in Delaware more than 15 years ago. I filed the Rehnquist recusal request *nunc pro tunc* to allow for retroactive disqualification, to relate back to the time when the honorary doctor of laws degree was awarded, about eighteen (18) years ago. This recusal request, like many others, was ignored.

When the same case came before the Court again, on a Motion to Reopen, Clerk William Suter issued a denial of the certiorari petition with this comment: "The Chief Justice took no part in the consideration or decision of this petition." The involuntarily recusal of a Supreme Court Justice, and the issue dealing with retroactively compelling a recusal *nunc pro tunc*, appears in a certiorari petition I filed on 9-19-01, at No. 01-479, which is pending. I will rely on the discussion at No. 01-479 and at No. 00-1894 to support a retroactive recusal, *nunc pro tunc*, on the merits. The recusal procedure at the US Supreme Court should be the same as motion practice in the inferior courts. The difference became evident after I docketed the certiorari petition entitled *James L. Martin v. John D. Walmer, [Widener University School of Law], et. al.*, No. 99-2009,--US--, and after I filed another Motion to Recuse and to Disqualify Chief Justice Rehnquist, when Assistant Clerk Francis J. Lorson wrote to me in a letter dated 7-10-00:

> "Your motion for the Chief Justice to recuse himself was received and has been circulated to the Court for its information. Such motions are not placed on this Court's docket."

Despite the Clerks' consistent efforts to enjoin a petitioner from seeking the remedy in Sec. 455 against a justice who does not voluntarily honor the recusal statute, the Court should revise its procedures to ensure that an aire of neutrality on the bench prevails. Disqualification of a justice, at 28 USC Sec. 455(a) is required "in any proceeding in which his impartiality might reasonably be questioned." In Aetna Life Insurance Co. v. Lavoie, 475 US 813 (1986), the Court set forth these elements to warrant not merely a recusal, but also a constitutional violation, where the judge at issue served on a state court:

> "More than 30 years ago Justice Black, speaking for the Court, . . . acknowledge[d] that what degree or kind of interest is sufficient to disqualify a judge from sitting 'cannot be defined with precision.' Nonetheless, a reasonable formulation of the issue is whether the 'situation is one which would offer a possible temptation to the average . . . judge to . . . lead him not to hold the balance nice, clear, and true."

475 US at 821-822. Chief Justice William Rehnquist should be forthwith recused and disqualified *nunc pro tunc* from this case, and from all the cases related to it. The recusal should set a precedent to control the *nunc pro tunc* disqualification of a series of inferior federal judges whose prolonged involvement in these related cases was unlawful *ab initio*.

B. A federal trial court may not rely exclusively upon a Magistrate's Report and Recommendation that was never issued to dispose of a final, appealable question.

The "minute order," dated 10-16-01, at Ex-6a, discloses that no one was present for either side when trial judge Rafeedie conducted a "proceeding" in chambers to verify that, contrary to his final decision appealed from to the Ninth Circuit, "no Magistrate Judge's Report and Recommendation was filed." Moreover, no opposition was received from the respondents. If ordinary principles of civil procedure had been honored, I would have been permitted to object to any Report and Recommendation from the Magistrate before the trial judge considered it. Because the trial judge was so completely removed from the reality of the record, he purported to rely exclusively on a Report and Recommendation that was never done. This misconduct, regardless of whether it is recklessly careless or maliciously intentional, comprises reversible error and should have been summarily reversed on appeal, as I requested. Instead, the appellate court affirmed the decision and further sought to protect the errant judge by enjoining any further filings, a tactic that was tried, but failed, in the US Supreme Court against this petitioner. Instead, the record clearly discloses that this petitioner did and does continue to have an uncontradicted right to be advancing these claims, and that at least one justice on the Court never had any lawful standing to participate in the attempt to undermine the ordinary judicial process to execute on a final, unappealed, administrative judgment.

If a Magistrate's Report had been issued, and if it contained what the trial judge said it did, the decision about the untimeliness of a Motion to Reopen would have been reversible error as well. The one-year limitations period for seeking relief under F. R. Civ. P. 60(b)(1) is tolled where: (a) the district court has no jurisdiction over the case, because it is before an appeals court when the one-year period expires; (b) the appeals court *sua sponte* raises and resolves an issue, governing the scope of an appeal, adverse to a party

concerning the timeliness of a post-trial motion, even though said party was not responsible for the clerical error that caused the one-day delay in the filing of the post-trial motion; and (c) the appeals court *sua sponte* enjoined the disfavored party from presenting any evidence or argument concerning the clerical, addressing error made at the court clerk's office when the envelope was mailed. Relief under Rule 60(b)(1) is mandated:

> "On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; . . . The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. . . . [T]he procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action."

The decision appealed from is also wrong because the motion to reopen is supposed to be made within "a reasonable time," and the limitation of one year runs from the time "after the judgment, order, or proceeding was entered or taken." To the extent the "proceeding" is viewed as a continuing case from the trial court to the court of appeals, the one-year period for seeking to reopen, at least on the issue in dispute, expired on or about 10-24-99, when the proceeding was pending a decision from the Ninth Circuit. It was not until 1-10-00 that the Memorandum was issued. According to the controlling cases governing jurisdiction to rule upon a Rule 60 motion, a district court has no power to act on the motion during the pendency of an appeal. *Schram*

v. Safety Investments Co., 45 F. Supp. 636 (ED Mich. 1942); and *Miller v. US*, 114 F. 2d 267 (7th Cir. 1940). The District Court, and not the US Court of Appeals, is the forum to preserve a record to satisfy the requirements of the federal rule authorizing one to seek relief from a judgment taken against him by mistake, inadvertence, surprise, or excusable neglect. *Perlman v. 322 West Seventy-Second St. Co., Inc.*, 127 F. 2d 716 (2nd Cir. 1942). "The general purpose of the rules to avoid technical proceedings is well known; and the district court, not the appellate court, affords a place to make a record covering the requirements of the rule." *Id.*, at 719, ftn. 2.

F. R. Civ. P. 60(a) discloses a more flexible standard for rectifying the record when clerical errors, like the one at bar, occur:

> "(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court."

If the appeals court had not *sua sponte* assumed that the one-day delay resulted from the my carelessness, rather than from a mistake the mailing Clerk made at the trial court, and if the appeals court had not enjoined any "clarification" of the reason for the delay, at Ex-18a, the problem would have been

summarily corrected shortly after the appeals court first raised it. Instead, the Clerk's error was *sua sponte* but incorrectly attributed to me, so that the scope of review changed adverse to me, even though I am not responsible for mistakes that occur in the Clerk's Office.

C. An attorney may not be disbarred without cause.

Although the Second, Eighth, and Ninth Circuits have ignored the Third and the Federal Circuit's efforts to sabotage my career by summarily disbarring me, without notice, hearing, or cause, under the guise of a "mistake" that allegedly occurred in the admissions office--a patently frivolous and malicious claim in light of the factual record--various other circuits have issued show-cause orders about the issues created. In a letter dated January 13, 1997, Hawaii Deputy Clerk Natalie Higa requested an affidavit about my application for admission to practice, specifically about my admission and standing before the state bars.

As noted on my application, the PA and NJ state courts claimed my admission was a result of their mistake; however, no mistake occurred. On 3-5-90, I got access to a document dated 6 1/2 years before, while liar Joseph Farnan purported to preside over the case in federal court. The former Secretary of the PA Board of Law Examiners, in her letter dated 10-20-83, addressed to the Dean at the Delaware Law School, wrote this:

> "It was discovered that some of the Press Releases' [sic] may contain the name of James L. Martin, QUARRYVILLE, PA on page 57. This name should not have been on the list. Please make sure that this name does not appear and if it does, please remove from your list."

I was not notified of this letter to the School's Dean. The records at the Public Ledger Building in Philadelphia correctly disclosed my name on the list of successful bar applicants. My MBE score was properly transferred from PA to NJ, where I was sworn in to practice law. The official ruse by which my bar admission at the state level was deemed a "mistake" was designed to avoid the requirement of due process prior to suspending or disbarring an attorney, and the fact that there was no basis for filing any grievance or complaint against me. The language "It was discovered that some of the Press Releases' . . .." was needed to avoid naming the persons responsible for attempting to disbar me without notice, hearing, or cause.

The ruse worked because of the association between private parties and judicial personnel. The state bars of DC, PA, NJ, MD, VA, and DE were affected. The admission clerks at these bars refused to issue certificates of good standing, and when a news reporter demanded an answer to the question about whether I had ever been admitted, they refused to answer.

In the interim, I corresponded with Ernest D. Preate, Jr., former PA Attorney General, who was in the Food Service Department at this address: #08269-0647; Dorm 207, Room 218; P.O. Box 1000; Federal Penitentiary, Minimum Security Section; Duluth, Minn. 55801, where he was serving a sentence for his financial dealings with organized crime in exchange for non-prosecution of them. I reminded him about the ". . . corrupt PA state officials you [Preate] were purporting to represent, [who] had recalled my driving privileges with knowledge that I had no adverse driving history, that the medical condition that I was alleged to have had was the result of a bogus diagnosis, and that I could not have had my license restored even if I had consulted a doctor who certified that I was not medically disabled, ..." I

reminded him that he state officials he porported to represent admitted: "At no time did you [corrupt PA state licensing officials] grant me the opportunity for a hearing before revoking my license." My permanent PA license was restored within 24 hours after I filed my brief in the PA Superior Court at 02308 PHL 83. My licenses to practice law should likewise be forthwith restored for similar reasons. The Hawaii trial court considered the precise issue about whether my bar admission was issued by mistake before I was admitted there, so obviously the doctrines of *res judicata* and collateral estoppel control the fair disposition of the case.

CONCLUSION

This certiorari petition should be granted to ensure that the federal recusal statute does apply retroactively to justices who serve on the Supreme Court, and to ensure that a recusal request cannot be avoided with a passing reference to excuse a specific justice from participating in a decision, despite an eighteen-year written record to prove the exact opposite. This petition also presents the radical departure of the Ninth Circuit from well-established precedent that requires a Magistrate's Report and Recommendation to exist if it is to comprise the reason for a final decision. Finally, an attorney cannot be disbarred without case, and conflicts on this point have arisen among the Circuits that should be resolved here.

DATED: November 27, 2001

BY:

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(Any footnotes trail end of each document)
*2001 U.S. App. LEXIS 11347, **

JAMES L. MARTIN, Plaintiff-Appellant, v. CHUCK QUACKENBUSH; et al., Defendants-Appellees.

No. 00-56767

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

2001 U.S. App. LEXIS 11347

May 14, 2001 **, Submitted

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2). Accordingly, we deny Martin's motion for oral argument.

May 29, 2001, Filed

NOTICE: [*1] RULES OF THE NINTH CIRCUIT COURT OF APPEALS MAY LIMIT CITATION TO UNPUBLISHED OPINIONS. PLEASE REFER TO THE RULES OF THE UNITED STATES COURT OF APPEALS FOR THIS CIRCUIT.

PRIOR HISTORY: Appeal from the United States District Court for the Central District of California. D.C. No. CV-98-00861-ER. Edward Rafeedie, District Judge, Presiding.

DISPOSITION: Martin's request to consolidate this appeal with appeal No. 00-15973 denied. District court's order AFFIRMED.

COUNSEL: JAMES L. MARTIN, Plaintiff - Appellant, Pro se, Wilmington, DE.

For CHUCK QUACKENBUSH, JOSEPH A. GAETANO, KURT J. LEWIN, Defendants - Appellees: Robert H. Nunnally, Esq., RUBENSTEIN & PERRY, Los Angeles, CA.

For KURT J. LEWIN, SUPERIOR COURT, STATE OF CALIFORNIA, COUNTY OF LOS ANGELES, Defendants - Appellees: Kevin C. Brazile, dcc, OFFICE OF THE COUNTY COUNSEL, Los Angeles, CA.

JUDGES: Before: PREGERSON, FERNANDEZ, and WARDLAW, Circuit Judges.

OPINION: MEMORANDUM *

James L. Martin appeals pro se the district court's order denying his August 23, 2000, motion to reopen an October 21, 1998, judgment. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo the district court's exercise of jurisdiction, *Scott v. Younger*, 739 F.2d 1464, 1466 (9th Cir. 1984), and we affirm.

Because Martin's motion was not filed within one year of the underlying judgment, the district court lacked jurisdiction and properly denied the motion. *See id.* at 1467.

Martin's remaining contentions lack merit.

We deny Martin's request to consolidate this appeal with appeal No. 00-15973.

----------Footnotes----------

* This disposition is not appropriate for publication and may

not be cited to or by the courts of this circuit except as may be provided by 9th Cir. R. 36-3.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. 00-56767
DC# CV-98-861-ER(RZ)

JAMES L. MARTIN,
Plaintiff-Appellant,

v.

CHUCK QUACKENBUSH, et al.,
Defendants-Appellees

ORDER DENYING MOTION TO REOPEN

[1] The Court has read and considered the papers filed in connection with Plaintiffs Motion to Reopen and HEREBY DENIES Plaintiff's request for the following reasons:

[2] Plaintiff is before the Court with a motion to reopen the case pursuant to Fed. R. Civ. P. 60(b)(l). Plaintiff claims that relief is warranted because of a clerical error that prevented the timely filing of a post-judgment tolling motion, which the Ninth Circuit Court of Appeals denied on May 20 1999 for untimeliness. Magistrate Judge Ralph Zarefsky recommends that the Court deny plaintiffs motion to reopen because it is time barred. No objections have been filed to Magistrate Judge Ralph Zarefsky's proposed order. The Court IETEREBY ADOPTS Magistrate Judge Ralph Zarefsky's recommendation and DENIES petitioner's motion to reopen the following reason:

[2] Fed. R. Civ. P. 60(b)(l) permits a court to relieve a party from a final judgment, order, or proceeding for

"mistake, inadvertence, surprise, or excusable neglect." It further provides that motions under subsection (1) shall be made "not more than one year after the judgment, order, or proceeding was entered or taken." Final judgment in this matter was entered on October 21, 1998. Plaintiff filed the instant motion on August 23, 2000, and thus failed to file within the one-year statute of limitations prescribed by Fed. R. Civ. P. 60(b).

[3] For the foregoing reason, the Court DENIES plaintiffs motion to reopen the case pursuant to Fed. R. Civ. P. 60(b)(1).

IT JS SO ORDERED.

IT JS FURTHER ORDERED that the Clerk of the Court shall serve, by United States mail or by telefax, copies of this Order on counsel for the parties in this matter.

Dated: 9/25/00

EDWARD RAFFEDIE
Senior United States District Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRTICT OF CALIFORNIA

CIVIL MINUTES- GENERAL

Case No. CV-98-0861-ER(RZ) Date: October 16, 2001
Title: James L. Martin v. Chuck Quackenbush, et al.

Present: THE HONORABLE EDWARD RAFEEDIE
X U.S. District Judge

Cynthia Salyer	None	None
Deputy Clerk	Court Reporter/Recorder	Tape

ATTORNEYS PRESENT FOR PLAINTIFFS:
None Present

ATTORNEYS PRESENT FOR DEFENDANTS:
None Present

PROCEEDINGS; (IN CHAMBERS)

Upon review of the Clerk's file, this minute order clarifies this Court's Order Denying Motion To Re open filed on September 25, 2000 to show that no Magistrate Judges Report and Recommendation was filed. Therefore, no objections to it have been filed. The reason for the Court's denial remains unchanged.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 00-15973
D.C. Nos. MS-99-00036-DAE
CV-00-00325-DAE

In re: JAMES L. MARTIN,
Respondent-Appellant.

Filed November 13, 2001

MEMORANDUM*

Appeal from the United States District Court for the District of Hawaii Helen Gillmor, Susan Oki Moliway, and Martin Pence, District Judges, Presiding

Submitted November 5, 2001**

Before: KLEINFELD, McKEOWN, and FISHER, Circuit Judges.

James Lee Martin appeals pro se the district court's order revoking his admission to the bar of the United States District Court for the District of Hawaii. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review for abuse of discretion the district court's disbarment proceedings. See Patterson v. Standing Comm. of Discipline to Bar of the United States Dist. Court for the Din, of Or. (in re Patterson), 176 F.2d 966, 968 n.1 (9th Cir. 1949). We affirm.

After receiving notice that the United States Court of Appeals for the Federal Circuit had revoked Martin's bar membership, the district court issued an order to show cause why Martin's admission to the bar of the United States District Court for the District of Hawaii should not be revoked, The district

court filed Martin's written response and granted Martin's request for a hearing. Martin failed to appear at the hearing, and the district court revoked his bar admission.

We are unpersuaded by Martin's contentions on appeal. We conclude that the district court did not abuse its discretion by revoking Martin's bar admission, by denying Martin's motion for summary judgment, and by denying Martin's motion pursuant to Federal Rule of Civil Procedure 59. Cf. In re Kramer, 193 F.3d 1131, 1132-33 (9thCir. 1999).

AFFIRMED.

Footnotes

*This disposition is not appropriate for publication and may not be cited. to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.

**Because this panel unanimously finds this case suitable for decision without oral argument, Martin's motion for oral argument is denied. See Fed. R. App. P. 34(a)(2).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

MISC. NO 99-00036 DAE
In the Matter of
JAMES LEE MARTIN

ORDER REVOKING ADMISSION TO THE BAR OF THE UNITED STATES DJSTRICT COURT FOR THE DISTRICT OF HAWAII

After having been advised that an Order of the United States Court of Appeals for the Federal Circuit revoking the membership of James Lee Martin ("Martin") to the Bar of that Court was entered on June 20, 1997, and that reconsideration was denied on August 1, 1997, and noting that the admission of Martin to this Court on February 21, 1997, was predicated on a certificate of good standing from the United States Court of Appeals for the Federal Circuit, on February 11, 1999, Chief Judge David A. Ezra issued an Order to Show Cause why Martin's admission to the bar of this court should not be revoked in accordance with Local Rule 83.4(d). By Order dated December 1, 1999, District Judges Helen Gillmor and Susan Oki Moliway, and Senior Judge Martin Pence were appointed as the hearing panel, with Judge Helen Gillmor as the presiding judge to preside over the hearing scheduled for Thursday, January 6, 2000, at 10:00a.m.

As the record of this court shows, Martin was given full notice of the January 6, 2000, hearing and advised clerk David Hisashima on December 19, 1999, that he would appear at the January 6, 2000, hearing. When the matter was called before the three hearing judges, Martin did not appear.

BACKGROUND

On January 3, 1997, James Lee Martin applied for admission to the bar of this court. His application included comments concerning the denial of his admission to the Pennsylvania, New Jersey, and other state courts, but indicated that he had been admitted to all the U. S. Circuit Courts of Appeals, with the exception of the Second Circuit and the D.C. Circuit, where he had not applied for admission. In view of these comments, Martin was requested to submit an affidavit (1) addressing the comments on his application concerning the denial of his admission to the various state courts, and (2) listing the state court(s) to which he had been admitted to practice and the respective date(s) of admission to those courts. Attached to Martin's application was a copy of a certificate dated December 3, 1996 from the U. S. Court of Appeals for the Federal Circuit admitting Martin to practice in that court. Apparently based on the certificate from the Court of Appeals for the Federal Circuit, this court admitted Martin to practice in the District of Hawaii effective February 21, 1997.

On March 19, 1998, the Clerk of this court received a letter from the Clerk of the U. S. Court of Appeals for the Third Circuit, enclosing that court's March 16, 1998 revocation of Martin's admission to the bar of that court, and on February 11, 1999, the instant Order to Show Cause was issued.

The actions of the various state and federal courts concerning Martin's admission to practice before those courts are straightforward; however, the dates of his applications for admission to many of the state and federal courts overlapped the dates of actions taken by the various courts which affected his admission to practice before those courts. For example:

Martin was born in Campbelltown, Pennsylvania, in May 1953, and, initially, was graduated from Widener University School of Law in Pennsylvania on December 31, 1982, In March 1984, Martin was informed that he had successfully completed the New Jersey bar examination and would be admitted to the state bar. He received a certificate of good standing dated April 25, 1984, from the Supreme Court of New Jersey indicating that be had been admitted to the practice of law on April 2, 1984. Also on April 2, 1984, Martin was admitted to the bar of the U. S. Tax Court premised on "a signature card and certificate of good standing from the New Jersey Board of Bar Examiners" issued in March 1984, Martin received a certificate of good standing from the Tax Court on April 6, 1984. Subsequently, he applied for admission to the bars of the District of Columbia, Pennsylvania, and Maryland. In each instance, he apparently passed the written portion of the respective bar examinations. However, the highest courts of Pennsylvania, Maryland, and the District of Columbia did not admit him because of concerns surrounding his moral character and fitness to practice law arising out of the following facts:

On April 30, 1984, the New Jersey Board of Bar Examiners notified Martin by letter that an error had been made, i.e., that he was not properly admitted to that Bar and that the issuance of the certificate of good standing was in error. The Board requested the return of the certificate that had been issued by the Supreme Court of New Jersey on April 25, 1984. Defendant promptly complied with the Board's request. However, as indicated, prior to April 30, 1984, Martin had applied for and had been admitted by the Supreme Court of New Jersey and the U. S. Tax Court in Washington, D.C. At the time of the April 30, 1984 letter, Martin was fully cognizant of the fact that his admission to the U. S. Tax Court was predicated on his admission by the Supreme Court of New Jersey.

A hearing was held by the Pennsylvania Board of Law Examiners on May 8, 1984 concerning Martin's character, and more particularly the false information provided by Martin on his application for admission to Delaware Law School, i.e., that be denied having been committed to an institution for mental illness when, in fact, he had. Martin would not admit that the information he bad provided to the Delaware Law School was false; consequently, the Board found Martin unfit, and declared Martin's bar examination a nullity. The results of the May 8, 1984 hearing were submitted by letter dated July 14, 1984, to the National Conference of Bar Examiners in Chicago, Illinois. (Martin claims he did not receive a copy of that 1984 letter until October 21, 1997.)

Despite the April 30, 1984 letter from the New Jersey Board of Bar Examiners retracting his admission to the Bar of the Supreme Court of New Jersey, which was the basis for his admission to the bar of the U. S. Tax Court, in 1995, Martin routinely gained admission to the U. S. Court of Appeals for the Federal Circuit based on the certificate of good standing issued by the U. S. Tax Court on April 6, 1984. His admission to the Court of Appeals for the Federal Circuit then pined him admission to the Bar of the U. S. Court of Appeals for the Third Circuit on June 21, 1996, and eventually to the bar of the U. S. District Court for the District of Hawaii on February 21, 1997.

In April 1997, the Federal Circuit court was informed by the Supreme Court of Pennsylvania that Martin had brought suit against that court and its Board of Law Examiners concerning his attempts to gain admission to the Pennsylvania state bar. In that suit, Martin contended that because he had been admitted to the bars of all of the U. S. Courts of Appeals, the Supreme Court of Pennsylvania must admit him to the state bar. It became apparent to the Federal Circuit court that in all likelihood Martin was not legally

admitted to the New Jersey state bar, or any other state bar. That court then directed Martin to inform that court whether he was a member of a state bar and, if not, to show cause why his membership in the Federal Circuit court's bar should not be revoked. On June 20, 1991, the U. S. Court of Appeals for the Federal Circuit issued its Order revoking Martin's membership in the bar of that court, stating, "Without membership in a state bar or admission to practice before the highest court of a state, a federal court is without authority in the first instance to grant bar membership", citing Fed.R.App.P, 46(a). Martin's membership in the Federal Circuit was based on his status as an attorney admitted to a state bar (New Jersey). Since Martin's admission to the Supreme Court of New Jersey and that court's certificate of good standing had been retracted on April 25, 1984, the Federal Circuit court found his admission to that court was granted in error, and his bar membership was revoked.

On July 15, 1991, the U. S. Court of Appeals for the Third Circuit received a copy of the Order of the U. S. Court of Appeals for the Federal Circuit revoking Martin's membership to the Federal Circuit Bar, Reconsideration was denied on August 1, 1991. Based on the action of the Federal Circuit court, the Court of Appeals for the Third Circuit issued an Order to Show Cause why his admission to the bar of that court should not be revoked aba ithtio. A hearing on the Order to Show Cause was scheduled for December 11, 1997k Immediately prior to the scheduled December 11, 1997 hearing, Martin submitted to the Third Circuit court routine correspondence from the U. S. Supreme Court regarding his filing of a petition for writ of certiorari, and a certificate of good standing issued by the U. S. District Court for the District of Hawaii, dated July 2, 1997.

ANALYSIS

At the time of Martin's application for admission to the bar of this court (January 3, 1997), Local Rule 110-1(a) provided:

> (A) Admission to Practice. Admission to and continued membership in the bar of this court is limited to attorneys of good moral character who are members in good standing of the bar, and who are eligible to practice before any United States Court or the highest court of any State or Territory of the United States, or of an Insular Possession thereof, upon prior approval by this court.

Again, Martin's application to the bar of this court was accompanied by a copy of a certificate of good standing issued by the U. S. Court of Appeals for the Federal Circuit dated December 3, 1996. Based on Martin's statement, at the time of his application to the bar of this court, Martin had not yet received a copy of the letter from the Pennsylvania Board of Law Examiners, which had declared his bar examination a nullity on May 8, 1984. He, however, was fully aware as early as April 30, 1984, that the New Jersey Board of Bar Examiners had declared his admirtanee to the New Jersey bar was in error, and that the certificate issued by the New Jersey Bar had been retracted. He also knew that the New Jersey certificate was the basis for his obtaining a certificate from the Tax Court on April 6, 1984 the certificate which then gained his entry to the U. S. Court of Appeals for the Federal Circuit, and then to the Court of Appeals for the Third Circuit on June 21, 1996, and then to the bar of this court on February 21, 1997.

In his written Answer to this court's Order to Show Cause, Max-tin argues: "Because the same issue that the

Federal Circuit raised (viz., the questionable status of his prior admissions to the bars of New Jersey and the Court of Appeals for the Third Circuit] had been previously raised and resolved before this court, the decision on February 21, 1997 (admitting Martin to the bar of this court] should foreclose any further controversy about the same question." Martin is wrong. As indicated earlier, his admittance was based solely on the certificate o good standing issued to him by the U. S. Tax Court on April 6, 1984.

CONCLUSION:

The standard criteria for a candidate's admittance to the bar of any state is the successful passing of a bar examination and good moral character. The Pennsylvania Board of Law Examiners nullified Martin's bar examination on the basis of his deceptive act The New Jersey Board of Bar Examiners deemed Martin's admittance to be in error. Martin has no certificate of membership for any state bar, and there is evidence of lack of good moral character. Martin therefore does not satisfy either of the two basic requisites under our 1997 local rule for membership to the bar of this court.

As indicated above, another basic requisite for admission to the bar of this court was that the candidate be eligible to practice before another United States court. Upon the revocation of Martin's membership to the bar of the Federal Circuit, Martin was no longer eligible to practice in this court.

The record shows that whenever and wherever Martin's membership in either a state or a federal bar was revoked, Martin was given a full due process hearing.

This court has examined the record before it and reviewed the Memorandum Orders of the U. S. Court of

Appeals for the Third Circuit and the U. S. Court of Appeals for the Federal Circuit. This court now finds that there is good cause to justify revocation of Martin's admission to the bar of this court, and that no grave injustice will result from such revocation. This court, therefore, finds that Martin's admission to the bar of this court was in error and, perforce, that the membership it granted to Martin on February 21, 1997 must be, and is, REVOKED.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, January 13, 2001

IN RE JAMES LEE MARTIN, MISCELLANEOUS NO. 99-00036 DAE - ORDER REVOKING ADMISSION TO THE BAR OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 00-15973
DC# CV-99-36 DAE
Hawaii (Honolulu)

In re:

JAMES L. MARTIN,
Respondent-Appellant,

ORDER

Before:Peter L. Shaw, Appellate Commissioner

Appellants motion for summary reversal of the district court's January 1 8, 2000 order revoking his admission to the bar of the United States District Court of the District of Hawaii is denied. See United States v. Hooton, 693 F.2d 857, 858 (9th Cit. 1982) (per curiam).

The opening brief was due on July 17, 2000. Within 14 days of the date of this order, appellant shall file a motion for extension of time to file the opening brief late, along with the opening brief If appellant fails to file the opening brief, this appeal will be dismissed for failure to prosecute. See 9th Cir. R. 42-1.

If appellant files the opening brief, this case will be ready for calendaring.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 00-55567
DC# CV-98-00861-ER
Central California
(Los Angeles)

JAMES L. MARTIN,
Plaintiff-Appellant,

v.

CHUCK QUACKENBUSH, et al.,
Defendants-Appellees

Filed July 14, 1999

ORDER

Before:HAWKINS and GRA.BER, Circuit Judges

Appellant's motion for reconsideration of the May 20, 1999 order limiting the scope of this appeal is denied. See Kyle v. Campbell. Soup Co,, 28 F.3d 928, 929 (9th Cir. 1994) (Fed. R. Civ. P. 6(e) does not apply where time runs from entry of judgment). All other pending motions are denied.

The briefing schedule is amended as follows: appellees' answering brief is due August 18, 1999; and the optional reply brief is due 14 days from service of the answering brief.

No motions for reconsideration, rehearing, clarification or modification of this order shall be filed or entertained. document is to be filed and processed.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF DOCUMENT DISCREPANCIES

To: U.S. District Judge
From: Wendy Melgar, Deputy Clerk.

Received Date: 10/15/01

Document Entitled: Jury Trial Demanded
Upon the submission of the attached document(s), it was noted that the following discrepancies exist:

X - Other Case termed and on appeal

ORDER OF THE JUDGE/MAGISTRATE JUDGE

The document is NOT to be filed, but instead REJECTED, and is ORDERED returned to *counsel *Counsel shall immediately notify, in writing, all parties previously served with the attached documents that said. documents have not been filed with the Court.

Dated: 11/09/01

Edward Rafeedie
U.S. District Judge/ U.S. Magistrate Judge

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 00-56767
DC# CV-98-00861-ER
Central California
(Los Angeles)

JAMES L. MARTIN,
Plaintiff-Appellant,

v.

CHUCK QUACKENBUSH, et al.,
Defendants-Appellees

Filed July 30, 2001

ORDER

Before" PREGERSON, FERNANDEZ, and WARDLAW, Circuit Judges.

The panel has voted to deny appellant's petition for panel rehearing and petition for rehearing en bane.

The full court has been advised of the petition for rehearing en bane and no judge has requested a vote on whether to rehear the matter en bane. See Fed. R. App. P. 35.

The petition for panel rehearing and the petition for rehearing en bane are denied.

No further filings shall be accepted in this closed appeal.